

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 11, 2010

D054552 American Casualty Company of Reading, Pennsylvania v. Children's Hospital Insurance Limited et al.

The judgment is affirmed. American Casualty is entitled to costs on appeal.
McConnell, P.J.; We Concur: Haller, J., O'Rourke, J.

D054783 Conservatorship of Deidre B.

Certified for publication. The judgment is affirmed.
Haller, J.; We Concur: McConnell, P.J., Irion, J.

D055530 People v. Sarza

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., Aaron, J.

D055553 People v. Jackson

The judgment is affirmed.
Huffman, Acting P.J. We Concur: McDonald, J., Irion, J.

D053536 People v. Popescu

The conviction on count 1 is reversed; in all other respects, the convictions are affirmed. The matter is remanded for resentencing.
McDonald, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D054339 In re Popescu on Habeas Corpus

The petition is denied.

D053875 People v. Agoun

It is ordered that the opinion filed on December 14, 2009, is modified. The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. Moore

D054768 People v. Garcia

Cause called on merits. Allison Simkin, Esq. argued for appellant.
Michael Thomas Murphy, Deputy Attorney General, argued for respondent. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 11, 2010 (Continued)

D053727 People v. Lynch

Cause called on merits. Russell S. Babcock, Esq. argued for appellant.
Stephanie H. Chow, Deputy Attorney General, argued for respondent.
Cause submitted.

D053961 Brady v. Granite Construction Co.

Cause called on merits. Holly N. Boyer, Esq. argued for appellant.
David R. Kipper, Esq. argued for respondent. Ms. Boyer replied. Cause submitted.

Court recessed at 9:36 a.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Judith Haller and Cynthia Aaron

D053768 La Jolla Cove Motel and Hotel Apartments, Inc., et al. v. Jackman et al.
D053853 Jackman et al. v. Baroudi et al.

Cause called on merits. Jon R. Williams, Esq. argued for appellant.
Richard J. Annen, Esq. argued for respondent. Mr. Williams replied.
Cause submitted.

D055094 Marsh v. California Coastal Commission

Cause called on merits. Damien Michael Schiff, Esq. argued for appellant.
Hayley Elizabeth Peterson, Esq. argued for respondent. Mr. Schiff replied.
Cause submitted.

Court recessed at 10:30 a.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Judith Haller and Joan Irion

D053464 People v. Cissna

Cause called on merits. Chuck Sevilla, Esq. argued for appellant. Gary W. Brozio,
Deputy Attorney General, argued for respondent. Mr. Sevilla replied. Cause
submitted.

Court recessed at 11:14 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Richard Huffman and Joan Irion

Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 11, 2010 (Continued)

D054223 Winn v. Higgins

Cause called on merits. Edward I. Silverman, Esq. argued for appellant. James P. Clark, Esq. argued for respondent. Mr. Silverman replied. Cause submitted.

D054006 Kaplan v. Whitmark

Cause called on merits. David A. Kay, Esq. argued for appellant. Gregory Lee Bosse, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

Court recessed at 1:58 p.m. to change panel members.

New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Terry O'Rourke and Joan Irion

D053035 Cornelius v. Vogt et al.

D053286 Cornelius v. Vogt

Cause called on merits. John Morris, Esq. argued for appellant. James S. Marinos, Esq. argued for respondent. Mr. Morris replied. Cause submitted.

Court recessed at 2:39 p.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Terry O'Rourke and Joan Irion

D053582 Gonzalez v. Michelucci-Hardrick et al.

Cause called on merits. Francisco Javier Aldana, Esq. argued for appellant. Darin L. Wessel, Esq. argued for respondent, Michelucci-Hardrick, etc. Kelly Andrew Beall, Esq. argued for respondent, GMAC Mortgage, Inc., etc. Mr. Aldana replied. Cause submitted.

Court recessed at 3:01 p.m. until Tuesday, January 12, 2010 at 9:00 a.m.

D053727 People v. Lynch

Submission of the above-entitled case at oral argument on January 11, 2009, is vacated. The parties are directed to submit letter briefs, no longer than 5 single-spaced pages, in response to the following question: On remand, if the trial court cannot determine, as a matter of law, that an arrest warrant meeting the requirements of Penal Code section 804 was issued within the relevant limitations period, what would be the appropriate procedure for determining any remaining statute of limitations tolling issues? The parties' briefs are due on or before January 22, 2009. The case will be resubmitted upon receipt of the requested briefing.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 11, 2010 (Continued)

- D055396 Lawson et al. v. Superior Court of San Diego County/Center Point**
Let a peremptory writ of mandate issue directing the superior court to vacate portions of its May 1, 2009 orders and issue new orders (1) overruling the State's demurrer to Esperanza's second cause of action (i.e., negligence); (2) overruling Center Point, Michon and Galston's demurrer to Lawson's second, third and fourth causes of action (i.e., negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress); and (3) overruling Center Point, Michon and Galston's demurrer to Esperanza's second cause of action (i.e., negligence). In all other respects, the petition is denied.
Irion, J.; We Concur: McIntyre, Acting P.J., Aaron, J.
- D056467 In re Smith on Habeas Corpus**
The petition is denied.
- D056466 In re Buckner on Habeas Corpus**
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 12, 2010

- D055285 People v. Caviness**
The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., Irion, J.
- D055255 In re Anthony H., a Juvenile**
The order transferring the case to Los Angeles County is reversed.
O'Rourke, J; We Concur: Nares Acting P.J., McDonald, J.
- D053735 Murphy v. Dell**
The order is affirmed. Costs on appeal are awarded only to Respondent Murphy.
Huffman, J.; We Concur: McConnell, P.J., McDonald, J.
- D053738 Ohton v. California State University of San Diego et al.**
The judgment is reversed. The trial court is directed to enter a new order granting
Ohton's writ petition. David Ohton is awarded costs on appeal.
O'Rourke, J.; We Concur: McConnell, P.J., Huffman, J.
- D055348 People v. Bensman**
The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Huffman, J.
- D055273 In re Wesley F., a Juvenile**
The judgment is affirmed.
Benke, Acting P.J.; We Concur: Huffman, J., McIntyre, J.
- D056518 People v. Cruz**
The petition is denied.
- D056523 United Pacific Insurance Company v. Tallarida/Ravet**
The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Judith Haller and James McIntyre
Clerk: D. Moore

- D048239 Hector B v. Emilia D.**
Cause called on merits. Victor Augustus Mordey, Esq. argued for respondent.
Beverly Baker-Kelly, Esq. argued for appellant. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 12, 2010 (Continued)

D056275 Howard v. Howard

The court has received and considered the parties' letter briefs regarding the appealability of the superior court orders dated September 11, 2009 and October 16, 2009 that the appellant seeks to challenge. The matter having been considered by Presiding Justice McConnell and Associate Justices Nares and O'Rourke, the appeal is dismissed because the orders, which denied the appellant's motions for reconsideration of an earlier summary judgment ruling, are not appealable. (E.g., *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1242.) Even if the appellant's notice of appeal could be construed to relate to the prior order denying her motion for summary judgment, the appeal would nonetheless have to be dismissed because such an order is similarly not subject to direct appeal. (*Federal Deposit Ins. Corp. v. Dintino* (2008) 167 Cal.App.4th 333, 343.) The respondents' request for unspecified sanctions is denied, without prejudice to any right they have to seek such relief from the superior court.

D053799 People v. Jackson

Cause called on merits. Carl Fabian, Esq. argued for appellant. Scott Taylor, Deputy Attorney General, argued for respondent. Mr. Fabian replied. Cause submitted.

Court recessed at 9:40 a.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Judith Haller and James McIntyre

D054785 People v. Maxell

D055492 In re Maxwell on Habeas Corpus

Cause called on merits. Chuck Sevilla, Esq. argued for appellant. Scott Taylor, Deputy Attorney General, argued for respondent. Mr. Sevilla replied. Cause submitted as to appeal only, D054785.

Court recessed at 10:02 a.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Judith Haller and Joan Irion

D053266 Center Associates v. Altman et al.

Cause called on merits. Kendra J. Hall, Esq. argued for appellant. Kurt W. Hallock, Esq. argued for respondent. Ms. Hall replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 12, 2010 (Continued)

Court recessed at 10:26 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Richard Huffman and Alex McDonald

Clerk: D. Moore

D054439 Mike v. Franchise Tax Board

Cause called on merits. Richard M. Freeman, Esq. argued for appellant.
Leslie Mare Smith, Deputy Attorney General, argued for respondent.
Mr. Freeman replied. Cause submitted.

Court recessed at 2:11 p.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D053447 People v. Sullivan

Cause called on merits. Lynda A. Romero, Esq. argued for appellant.
Tami Hennick, Deputy Attorney General, argued for respondent. Ms. Romero
replied. Cause submitted.

Court recessed at 2:52 p.m. until Wednesday, January 13, 2010 at 9:00 a.m.

D056316 In re Strausbaugh on Habeas Corpus

The petition is denied.

D056247 Kunit v. Kingston

The court has received and considered the parties' letter briefs regarding the
appealability of orders of the superior court dated March 19, 2009 and June 30,
2009 that the appellant seeks to challenge. The matter having been considered by
Presiding Justice McConnell and Associate Justices Nares and O'Rourke, the appeal
is dismissed on the ground that the notices of appeal from those orders were not
timely filed. Although the appellant requests that this court make an exception to
the timeliness requirements in the interests of justice so that his appeals may
proceed, the timeliness of a notice of appeal is jurisdictional; in the absence of a
timely notice of appeal, this court lacks the power to act in the matter, but must
instead dismiss the appeal. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15
Cal.3d 660, 666-667.)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 12, 2010 (Continued)

D056197 Shannahan v. Shannahan

The court has received and considered the parties' letter briefs regarding the appealability of the superior court's order dated August 19, 2009 that the appellant seeks to challenge. The matter having been considered by Presiding Justice McConnell and Associate Justices Nares and O'Rourke, the appeal is dismissed on the ground that the order is not appealable.

Generally, an appeal may be taken from an order made after a judgment made appealable by Code of Civil Procedure section 904.1, subdivision (a)(1). (Code Civ. Proc., §904.1, subd. (a)(2); *Solis v. Vallar* (1999) 76 Cal.App.4th 710, 713.) However, to be appealable, such an order must not only follow a judgment that is itself appealable, but it also must involve issues different than those involved in the underlying judgment and "affect" or "relate to" the underlying judgment by enforcing it or staying its execution. (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651-652.) A post-judgment order that is preliminary to future proceedings does not "affect" or "relate to" the underlying judgment and thus is not immediately appealable. (*Id.* at pp. 652-654; see generally *Olson v. Cory* (1983) 35 Cal.3d 390, 399 [recognizing that a decree is final if it leaves no issue for future consideration except the fact of compliance or noncompliance with its terms, but is not final when "'anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties.'"].)

Here, the challenged order merely grants respondent's motion to join a third party to the underlying proceedings. It does not adjudicate any substantive rights of the parties, but rather contemplates future proceedings for that purpose. Because the substance and effect of the order is not in any sense final, it is not appealable. (See generally *Griset v. Fair Political Practices Com'n* (2001) 25 Cal.4th 688, 698.) Accordingly, we must dismiss the appeal.

D056527 Bremco Construction, Inc. v. Superior Court of San Diego County/Seymour/Lewis Development, LTD. et al.

The petition is denied.

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- D055912 In re Brianna L. et al., Juveniles**
Dismissed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.
- D056522 In re Rodriguez on Habeas Corpus**
The petition is denied.
- D055619 In re Mariam M. D., a Juvenile**
The judgment is affirmed.
McDonald, J.; We Concur: Huffman, Acting P.J., McIntyre, J.
- D054254 People v. Jennison**
The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Aaron, J.
- D054006 Kaplan v. Whitmark**
The trial court's award of \$4,489.59 to Whitmark on his cross-complaint is reversed. In all other respects the judgment is affirmed. The parties are to bear their own costs on appeal. Irion, J.; We Concur: Benke, Acting P.J., Huffman, J.
- D054223 In re the Marriage of Higgins**
The order is affirmed. Irion, J.; We Concur: Benke, Acting P.J., Huffman, J.,
- D053582 Gonzalez v. Michelucci-Hardrick et al.**
The judgment in favor of NMS and Michelucci-Hardrick is reversed as to the causes of action pleaded by Gonzalez, individually and as trustee for Valadez, against NMS and Michelucci-Hardrick for breach of contract; breach of fiduciary duty; fraud; violation of Business and Professions Code section 17200; and negligent infliction of emotional distress. In all other respects, the judgments are affirmed. All parties to bear their own costs on appeal.
Irion, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.
- D055036 In re Anna S., a Juvenile**
We dismiss the appeal as moot.
Benke, Acting P.J.; We Concur: McDonald, J., Aaron, J.
- D056469 Szabo et al. v. Superior Court of Imperial County/CM Ranch Corporation**
Real party in interest is requested to file a response to the petition and to specifically address the following issues: (1) whether and to what extent any of the waiver provisions of section 5 of CM 1 apply to the "covenant" set forth in section 3.1; and (2) if the waiver provisions of section 5 render the contract illegal, what is the effect, if any, of the severability provision contained in section 7.14. The response is due on or before January 25, 2010.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 13, 2010 (Continued)

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and
The Honorable Associate Justices Judith Haller and James McIntyre
Clerk: D. Moore

D054109 Smith v. Accom

Cause called on merits. Hayley Marcelo Octavia Accom argued for appellant in pro per, telephonically. Cause submitted.

D054991 Affordable Housing Coalition of San Diego County et al. v. City of San Diego

Cause called on merits. Cory Jay Briggs, Esq. argued for appellant. Carmen Brock, Deputy City Attorney, argued for respondent. Mr. Briggs replied. Cause submitted.

D053250 People v. Ramos

Cause called on merits. Diane E. Berley, Esq. argued for appellant. Arlene Aquintey Sevidal, Deputy Attorney General, argued for respondent. Ms. Berley replied. Cause submitted.

D055020 Hermosa Terrace Limited et al. v. Torrey Pines Property Management, Inc.

Cause called on merits. Jerome E. Eggers, Esq. argued for appellant. John Arthur Mayers, Esq. argued for respondent. Mr. Eggers replied. Cause submitted.

Court recessed at 10:00 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. Moore

D053847 Yoon v. Bush

Cause called on merits. Sharon L. Bush argued for appellant in pro per. Jim Mitchell, Esq. argued for respondent. Cause submitted.

Court recessed at 1:47 p.m. to change panel members.

New panel members: The Honorable Judith Haller, Acting Presiding Justice, and
The Honorable Associate Justices Terry O'Rourke and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 13, 2010 (Continued)

D053827 McKim v. Kindred Nursing Centers West, LLC et al.

Cause called on merits. John S. Addams, Esq. argued for appellant, McKim, etc. Erika Joan Fernbach, Esq. argued for appellant, Cadwell, etc. Mr. Addams replied. Cause submitted.

Court recessed at 2:17 p.m. to change panel members.

New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and
The Honorable Associate Justices Terry O'Rourke and Joan Irion

D054366 Siller et al. v. Option One Mortgage Corporation

Cause called on merits. Clayton and Maria Siller argued for appellants in pro per. David Michael Parker, Esq. argued for respondent. Cause submitted.

D053948 People v. Shockman

D055663 In re Shockman on Habeas Corpus

D055356 In re Shockman on Habeas Corpus

Causes called on merits. Charles R. Khoury, Esq. argued for appellant. Marvin Mizell, Deputy Attorney General, argued for respondent. Mr. Khoury replied. Cause submitted as to appeal only, D053948.

Court recessed at 3:04 p.m. until Thursday, January 14, 2010 at 9:00 a.m.

D056306 A.R. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner father A.R. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. No timely petition for writ of mandate has not been filed for mother M. C. Her notice of intent is deemed to be abandoned. The case is dismissed.

D056344 K.B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

No timely petition for writ relief has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D054908 Brede v. Science Applications International Corporation
Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear own costs on appeal.

D055733 In re Hunter W., a Juvenile
The order is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., Haller, J.

D055278 In re Carly O., a Juvenile
The orders are affirmed. Irion, J.; We Concur: Nares, Acting P.J., Haller, J.

D055155 In re Lugo on Habeas Corpus
The petition for a writ of habeas corpus is denied.
Irion, J; We Concur: McIntyre, Acting P.J., Aaron, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Gilbert Nares and Judith Haller
Clerk: D. Moore

D054386 Gray v. Monterey Financial Services, Inc.
Cause called on merits. Mark William Yocca, Esq. argued for appellant.
Todd J. Eastman, Esq. argued for respondent. Mr. Yocca replied. Cause submitted.

Court recessed at 9:32 a.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Gilbert Nares

D053158 MJB Development Group et al. v. Diamond Escrow, Inc.
Cause called on merits. Noel W. Spaid, Esq. argued for appellant.
Bradley A. Bartlett, Esq. argued for respondent. Ms. Spaid replied.
Cause submitted.

Court recessed at 9:50 a.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 14, 2010 (Continued)

D053210 Coronado City Views v. Regatta Bay, LLC.

Cause called on merits. David A. Niddrie, Esq. argued for appellant.
John Morris, Esq. argued for respondent. Mr. Niddrie replied. Cause submitted.

Court recessed at 10:30 a.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices James McIntyre and Joan Irion

D054659 In re Tyrone Johnson on Habeas Corpus

Matter called on merits. Michael Satris, Esq. argued for petitioner. Linnea Piazza,
Deputy Attorney General, argued for respondent. Ms. Piazza replied. Matter
submitted.

Court recessed at 11:06 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Gilbert Nares and Joan Irion
Clerk: D. Moore

D054780 Apex Wholesale, Inc. v. Fry's Electronics, Inc.

Cause called on merits. Shawn Allen McMillan, Esq. argued for appellant.
William Howard Curtis, Esq. argued for respondent. Mr. McMillan replied.

Court recessed at 1:48 p.m. to change panel members.

New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and
The Honorable Associate Justices Judith Haller and Cynthia Aaron

D054563 People v. Pressley

Cause called on merits. Robert Booher, Esq. argued for appellant.
Jennifer Anne Jadovitz, Deputy Attorney General, argued for respondent.
Cause submitted.

Court adjourned at 2:06 p.m.

**D056111 Eddie J. v. Superior Court of San Diego County/San Diego County Health and
Human Services Agency**

The attorney for petitioner Eddie J. has notified the court that a petition for writ of
mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as
there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
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January 14, 2010 (Continued)

D055882 Vibo Corporation v. Phillip Morris, Inc., et al.

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D055070 R.B. Trails Homeowners Association v. Mestler

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
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January 15, 2010

D055538 In re Joseph H., a Juvenile

The judgment terminating parental rights is reversed. The case is remanded to the juvenile court with directions to conduct a proper ICWA inquiry, determine whether ICWA applies, and, if necessary following the inquiry and determination, to order ICWA notice and conduct any further proceedings in compliance with ICWA. If, after notice, a tribe claims Joseph is an Indian Child, the court shall proceed in conformity with ICWA; if no tribe claims he is an Indian child, the court shall reinstate the judgment. Nares, J.; We Concur: McConnell, P.J., McIntyre, J.

D055055 People v. Eaves

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.360(c)(5)(A). The appeal is dismissed.

D053238 People v. Nash

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D054050 In re Marriage of Lira

The orders are reversed and the matter remanded for redetermination of Jerry Lira's request for attorney fees against Teodula Lira in connection with his partition cross-complaint. Joaquin Lira shall recover his costs on appeal. O'Rourke, J.; We Concur: McConnell, P.J., Irion, J.

Court convened at 10:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Gilbert Nares and Alex McDonald
Clerk: J. Matuk

D053687 People v. Dang

Order to show cause called on merits. Pamela Lacher, trial counsel for defendant, appeared in pro per. Joanna McKim, appellate counsel for appellant, appeared. Vincent La Pietra, Deputy Attorney General, appeared. Presiding Justice McConnell inquired of Attorneys Lacher and McKim whether an agreement could be worked out regarding transmittal of trial materials. Counsel agreed to confer. Presiding Justice McConnell directed counsel to return to the courtroom after their conference. Counsel left the courtroom.

D056178 Sommer v. Hawkes

Order to show cause called on merits. Ervin Sommer, appellant, argued for appellant in pro per. Gregory Lievers, counsel for respondent submitted on the papers on file. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

January 15, 2010 (Continued)

D053687 People v. Dang

Order to show cause called on merits after unsuccessful conference. Pamela Lacher, trial counsel for defendant, argued in pro per. Joanna McKim, appellate counsel, argued for appellant. Vincent La Pietra, Deputy Attorney General for respondent, did not argue. Attorney Lacher was ordered to turn over compact discs and transcripts in her possession regarding People v. Dang to California Highway Patrol Officer Carlos Trejo by 11:30 a.m. this date. The order to show cause hearing was continued to February 9, 2010, at 1:30 p.m.

Court adjourned at 10:30 a.m.

D054181 Valdivia et al. v. Certaineed Corporation et al.

The request for publication of the opinion is denied.